

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-318-C - ORDER NO. 2001-326

APRIL 13, 2001

IN RE: Interim Local Exchange Carrier Fund –)	ORDER ON REQUESTS
Establishment of Fund to Address Revenue)	FOR
Impact of ILECs Electing to Reduce Toll)	RECONSIDERATION
Switched Rates.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on two requests for reconsideration of our Order No. 2001-151, filed by the South Carolina Telephone Coalition (SCTC) and the Consumer Advocate for the State of South Carolina (the Consumer Advocate). The request for reconsideration filed by the SCTC is also supported by a letter from Verizon Communications.

SCTC requests reconsideration of so much of the Order as directed all of the pertinent local exchange carriers to file their respective rates of return for the years ending December 1997, 1998, and 1999. The carriers submitted the data for 1996. SCTC states that the 1996 data is the only relevant data, since the rate adjustments in the case were implemented in April 1997, thus the last three years rate of return data could not have been taken into consideration by the Commission in approving the rate adjustments. We grant reconsideration of this part of the Order. We also agree with SCTC's point, in that, since the rates were implemented in April 1997, rate of return data for 1997, 1998, and 1999 could not have been relevant. We therefore modify Order No. 2001-151 and

state that only rate of return data for the year ending December 1996 need be furnished by SCTC.

The Consumer Advocate filed a Petition for Reconsideration of the same Order, based in part on this Commission's refusal to order a discovery conference pursuant to Rule 26(f) SCRCF. We note that the rule provides that at any time after the commencement of an action, the court may direct the attorneys for parties to appear before it for a conference on the subject of discovery (emphasis added). The Consumer Advocate then states that the discovery conference becomes mandatory if the applicant satisfies certain criteria. However, we would note that the "may" language and the later "shall" language appear to be in conflict. As we stated in Order No. 2001-151, however, the Reporter's Note to the rule specifically states that a discovery conference is discretionary with the Court. Therefore, we again hold that the discovery conference was discretionary with the Commission in this instance, and we had the right to refuse to allow the conference.

The Consumer Advocate was not without remedies following the issuance of Order No. 2001-151. He could have moved to compel answers to the interrogatories in this matter with which he was dissatisfied pursuant to Rule 37(a)(2) SCRCF, but he did not do so.

The Consumer Advocate also complains that this Commission erroneously found that the Companies involved provided all information relevant to the subject matter in the pending action. We discussed this matter extensively in Order No. 2001-151, and herein reiterate this discussion as fully as if reprinted herein. In addition, although we

understand the Consumer Advocate's arguments about the scope of discovery in this case, we do not believe that the additional information sought by the Consumer Advocate is of any relevance when considering the Supreme Court's charge to this Commission on remand. The Supreme Court stated in part that this Commission was to "...re-evaluate the total five-year rate increases, and adjust the future scheduled annual rate increases if necessary." The Consumer Advocate seems to be proceeding under the theory that this Commission has a choice as to whether or not local rate increases must be instituted. (See testimony of Consumer Advocate witness Allen Buckalew at 7 in the hearing on remand, who states: "I was not able to determine from the data supplied by the Companies that any rate increases are needed.") S.C. Code Ann. Section 58-9-280 (L) (Supp. 2000) states in part that: "To offset the adverse effect on the revenues of the incumbent LEC, the commission shall allow adjustment of other rates not to exceed statewide average rates, weighted by the number of access lines...." Consequently, the Commission has no choice but to allow rate increases as a part of the Legislature's goal in the establishment of the Interim Local Exchange Carrier Fund. Extensive data was provided by the incumbent local exchange carriers during the first proceeding in this matter, and on discovery on remand. The Consumer Advocate failed to make discovery requests during the first phase of this case, and only now, after remand, does he propound interrogatories. The Consumer Advocate's view of the goals of this case is inconsistent with our view and that of the South Carolina Supreme Court. That view is that we are to conduct a review and make changes if necessary in the rate increases instituted during the original proceeding.

This does not necessitate the need for the discovery as proposed by the Consumer Advocate, which, for the most part, is simply not relevant to the proceeding before us.

Accordingly, the Petition for Reconsideration filed by the Consumer Advocate is denied.

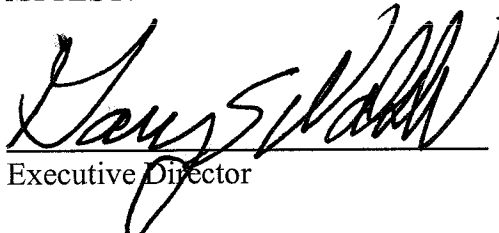
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)